



# Utah Division of Solid and Hazardous Waste

## Solid Waste Management Program

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## Financial Assurance Guidance

This guidance is not a rule. It has been prepared to give the reader information, in plain language, about how the Division of Solid and Hazardous Waste expects to interpret Rule R315-309. In the event questions arise regarding the matters discussed in this guidance, the text of the rule will govern.

An owner or operator of any solid waste disposal facility requiring a permit is required to establish financial assurance for the cost of closure, post-closure care and corrective action, when corrective action is required. Facilities that are operated by the federal government and by the State of Utah are not required to meet the financial assurance requirement.

The amount of financial assurance required is the cost of a third party conducting these activities. The amount of the financial assurance required is based on the cost estimate for closure or post-closure care that is submitted and approved as part of the permit application. Financial assurance for corrective action is based on the cost estimate that is made at the time the action is approved by the Executive Secretary of the Solid and Hazardous Waste Control Board. Cost estimates must be updated annually in the annual report which must be submitted by March 1<sup>st</sup> of each year. The annual update must account for inflation and changes in the design of the facility. Costs may be increased or reduced through design changes, operational changes or partial closure. The update provided in the annual report must reflect the closure and post-closure care cost changes and the financial assurance amount must be modified to reflect the new estimate. Changes in the cost estimates and in the financial assurance amount must be approved by the Executive Secretary before they are effective.

The owner or operator of a facility may be released from financial assurance for closure when the closure has been completed and has been approved by the Executive Secretary. Release from the post-closure care or corrective action financial assurance requirements occurs when the Executive Secretary has determined that the facility has stabilized and is not a threat to human health or the environment or when the approved corrective action levels have been met and received Executive Secretary approval.

The Utah solid waste rules allow several different types of financial assurance mechanisms to be used to meet the requirements of the rule. Utah Administrative Code (UAC) R315-309 is the specific rule covering the types of financial assurance that can be used. This rule should be referred to for specific requirements. The following guidance is provided to help in understanding each mechanism but should not be used as a substitute for the rule.

## Trust Fund

Trust funds are sums of money set aside to cover anticipated future costs (e.g., closure, post-closure care or corrective action) and are typically overseen by a trustee. The owner or operator would be the Grantor, with the trustee responsible for making payments from the trust under certain conditions. The trustee is required to manage the trust according to the terms of the trust agreement and in accordance with applicable state law. A copy of the trust agreement must be received and approved by the Executive Secretary and placed in the facility's operating record. To ensure that the trust fund is properly managed, the rule specifies that the trustee must have the authority to act as a trustee, and that the trustee's operations must be regulated and examined by a Federal or State agency.

Requirements for the use of a trust fund as a financial assurance mechanism are found in UAC R315-

309-3(3). Anyone wishing to use this mechanism should refer to the rules, this guidance is meant only as a help in interpreting the requirements of the rule.

Although the owner or operator is the grantor of the trust, The Executive Secretary controls the payment of funds from the trust. The Executive Secretary can approve payments from the trust to the owner or operator, when they have completed closure or post-closure work, or, if the owner or operator is not able to conduct the required operation, the Executive Secretary can authorize payment to a third party to do the work.

A local government that wishes to use a trust fund may find it cost affective to use the Utah Public Treasures' Investment Fund. If this option is one that meets the needs of the facility, please contact Robert C. Kirk at 801/538-1462 and he will be able to provide assistance.

While the wording of the trust is not specified in the rule, the trust should contain wording which is in compliance with the rule and achieves the intent of the rule. Wording of a trust agreement should specify that the trust is irrevocable (i.e., that the owner or operator may neither alter the terms of the trust agreement nor terminate the trust except with the written consent of the trustee) and might specify the types of investment policies that the trustee must follow in managing the trust. Trust wording must also state that withdrawal of funds can not occur without approval of the Executive Secretary and that the funds must be used for closure or post-closure care costs. The Division has worked with Mr. Kirk, in the Treasures office to draft a trust agreement that meets the requirements of the rule and does not need individual approval of the form by the Executive Secretary. A sample trust agreement is contained in Exhibit A

Utah rules state that the trust fund must be fully funded by the end of the permit life (Utah solid waste landfill permits are granted for a maximum of five years) or at the time of closure, whichever is less. Generally five years will be the maximum time allowed to fully fund the trust. The trust can be funded with one full payment or a number of payments spread over the period allowed in the permit for funding closure. If the trust is funded by five payments over the permit life, the amount of these payments is to be calculated using the following formula:

$$NextPaymnt = \frac{CE - CV}{Y}$$

where CE is the current closure and/or post-closure cost estimate (updated for inflation or other changes), CV is the current value of the trust fund (i.e., the value of the funds already paid into the trust), and Y is the number of years remaining in the pay-in period.

Recalculation of the trust fund payment is required when the cost estimate for the closure and post-closure care changes. Changes in the closure and post-closure costs and the annual payment to the fund are required to be reported in the annual report due on March 1<sup>st</sup> of each year. The annual report should contain the most recent cost estimates that have been recalculated to reflect inflation and any changes in the landfill closure design or closure area.

The requirements for a corrective action trust fund differ somewhat from the requirements for a closure and post-closure care trust fund for two reasons:

- The size and duration of corrective action costs are significantly greater; and
- corrective action financial assurance is required only upon the detection of a release while closure and post-closure financial assurance are required prior to the activities being undertaken.

Thus, to be structured like the trust fund for closure and post-closure care, which ensures that the trust is fully funded by the time that the funds are needed (i.e., by the time the facility closes), a trust fund for corrective action would need to be fully funded as soon as corrective action is triggered, which would pose an undue burden to nearly all owners or operators. To make the corrective action trust fund available to greater numbers of owners and operators while ensuring that funds are available to complete corrective action, Utah rules allow an owner or operator to fund the trust gradually over the first half of the corrective action period in an amount that would ensure sufficient funds to cover the costs of corrective action incurred during the second half of the corrective action period.

The corrective action trust fund would therefore operate as follows. First, the corrective action trust fund pay-in period is one-half of the length of the corrective action period. Second, the required balance in a trust fund for corrective action at the end of the corrective action pay-in period must be sufficient to cover the remaining corrective action costs after the end of the pay-in period. For example, if corrective action will take place over a ten-year period, payments into this fund would start when corrective action begins and end in the fifth year. At the end of the fifth year, the amount of money in the trust fund would have to be sufficient to cover the corrective action costs estimated for the remaining five years of the corrective action period.

The trust fund for corrective action would be built up in a manner similar to that described for closure and post-closure care trust funds, with changes to accommodate the different pay-in period for trust funds for corrective action (as discussed above). The specific amount of the annual payments is to be calculated using the following formula:

$$NextPaymnt = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs to be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

Because the trust fund involves setting aside an owner or operator's actual funds, the use of these funds by the owner or operator for closure and post-closure care operations, if not needed for corrective action, is allowed. The owner or operator would apply to the Executive Secretary for release of funds upon proof of completion of the work.

## **Surety Bond (Guaranteeing Payment or Performance)**

Requirements for the use of a surety bond as a financial assurance mechanism are found in UAC R315-309-3(4). Anyone wishing to use this mechanism should refer to the rules, this guidance is meant only as a help in interpreting the requirements of the rule.

A surety bond guarantees payment for, or performance of, closure, post-closure care, or corrective action if the holder of the bond (the facility owner or operator) fails to fulfill these obligations. Surety bonds are generally issued by a surety company. Under the terms of a payment bond, the surety company issuing the bond promises to pay the costs of closure or post-closure care activities if the owner or operator is unable or unwilling to carry out those activities. With a performance bond, the surety company promises to either perform the required activities on behalf of the owner or operator or to contract with a third party to conduct the required activities.

If the owner or operator is using a payment bond to satisfy the financial assurance requirements, a

standby trust fund must be established at the same time that the assurance mechanism is established. A more detailed discussion of standby trusts is provided below. A copy of the bond must be placed in the facility's operating record and submitted to the Executive Secretary for approval. Approval from the Executive Secretary to meet the requirements of R315-309.

To ensure that the surety bond provides an adequate guarantee of funds, the rule requires that the surety company issuing the bond be listed in Circular 570 of U.S. Department of the Treasury. Circular 570 is a list of surety companies which have been approved for writing construction bonds and other surety bonds for federal projects. The rule also requires that the bond must be issued in an amount equal to the cost estimates for closure, post-closure care or corrective action (unless multiple instruments are used as described below) and must be effective prior to the initial receipt of waste or by the date required in the permit, or, in the case of corrective action, within 120 days of the selection of the corrective action remedy. The rule also requires surety bonds to contain provisions preventing cancellation of the bond either by the surety, except with 120 days advance notification of cancellation to the owner or operator and to the Executive Secretary, or by the owner or operator unless an alternate mechanism has been obtained. Without such cancellation provisions a third-party provider of assurance might cancel a mechanism immediately prior to closure or during the post-closure care or corrective action period in order to avoid payment of those costs.

While not required by the rule, the wording of surety bonds, used to demonstrate financial assurance, may follow the example in Exhibit B. Use of the Exhibit B wording will help ensure that the bonds meet the performance standard and minimize the time required for review. Examples of both a payment and a performance bond are included in Exhibit B.

UAC R315-309-3(4)(e) requires the establishment of a standby trust fund to accompany a payment type surety bond. A standby trust fund serves as a depository for funds collected from the providers of financial assurance. Standby trust funds are necessary because Utah law requires payments to Divisions be deposited in the State General Fund, unless otherwise indicated by statute. Funds cannot be earmarked for a specific use without approval of the Legislature. Therefore, to guarantee that the funds assured for a specific facility are directed to the costs of closure, post-closure care or corrective action for that site, a standby trust fund is necessary. The standby trust fund should be structured in a manner substantially similar to the trust fund described above.

An example of a Standby Trust to be used with a surety bond or a letter of credit is shown in Exhibit F. This document is the result of a comparison of the trust agreement that is found in 40 CFR 264.151 and standby trusts currently held by the Hazardous Waste Branch with changes made to reflect the solid waste rules.

## **Letter of Credit**

The requirements for the use of letters of credit as a financial assurance mechanism are found in UAC R315-309-3(6). Anyone wishing to use this mechanism should refer to the rules, this guidance is meant only as a help in interpreting the requirements of the rule.

A standby letter of credit is an instrument issued by a bank or other financial institution that guarantees payment to the beneficiary, the State of Utah, if the owner or operator of the facility fails to perform certain obligations. Standby letters of credit differ from traditional commercial letters of credit in that standby letters of credit cannot be drawn upon unless a specified event occurs. An example of a letter of credit can be found in Exhibit C.

To ensure that the letter of credit provides secure funds for closure, post-closure care or corrective action for known releases, the rule requires that the financial institution issuing the letter of credit must be an

institution with the authority to issue such a letter and whose letter-of-credit operations are regulated and examined by a Federal or State agency. These agencies would be the same agencies discussed above as having authority to regulate trustees, and would differ depending on the type of bank issuing the letter of credit.

The letter of credit, like the surety bond described above, must be issued in an amount equal to the closure, post-closure care, or corrective action cost estimates (unless multiple instruments are being used for financial assurance) and must be effective prior to initial receipt of waste, or on the date required in the permit, in the case of closure and post-closure care. In the case of corrective action, the letter of credit must be effective within 120 days of the selection of the corrective action remedy. The letter of credit must also contain provisions limiting cancellation similar to those described above for surety bonds.

As with a surety bond guarantee of payment, a standby letter of credit must have an accompanying standby trust into which the money from the letter of credit can be placed (see Exhibit F).

Letters of credit must be submitted to the Executive Secretary and be approved. The letter of credit will be held by the Executive Secretary and a copy of the letter will be placed in the operation record of the facility.

## **Insurance**

Insurance is a contractual arrangement, called the policy, under which the insurer agrees to compensate the policyholder for losses. The purchase of insurance transfers the financial risk from the policyholder to the insurer. While insurance is generally considered most appropriate for coverage of contingent or unknown events, such as accidents or natural disasters, insurance is an allowable mechanism for assuring closure and post-closure care.

Insurance is not appropriate coverage for known corrective action. Financial assurance for corrective action is not required until a release has been detected and insurers will not issue policies to cover the cost of damages that have already occurred (analogous to issuing fire insurance for a burning building).

UAC R315-309-3(5) contains the requirements for the use of insurance as a financial assurance mechanism. Anyone wishing to use this mechanism should refer to the rules, this guidance is meant only as a help in interpreting the requirements of the rule. Exhibit D has an example of an insurance certificate.

The rule requires that the insurance policy be written to cover the full amount of the closure or post-closure care cost estimates (unless multiple instruments are being used). An insurance policy for closure or post-closure care must be in effect prior to the initial receipt of waste or on the date required in the permit and a copy of the insurance policy must be placed in the facility's operating record. The insurance policy must be submitted to and approved by Executive Secretary.

The rule requires that insurers issuing policies used to demonstrate financial assurance for closure and post-closure care must, at a minimum, be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

The rule specifies that insurance policies may be canceled by the insurer only for non-payment of premium and only 120 days after notice is sent to the owner or operator and to the Executive Secretary. Owners and operators may cancel the policy if they have obtained a replacement mechanism or if they have been released from financial assurance requirements.

## Local Government Financial Test

The local government financial test has been adopted to provide a cost effective way for a local government that owns or operates a landfill to assure that the landfill will be closed in a proper manner. A local government that uses the local government test is not assuring that the money needed to close the landfill is set aside, but is assuring that the local government has sufficient funds and stability that the closure costs can be obtained when needed.

Requirements for the local government test are found in UAC R315-309-3(7). Anyone wishing to use the local government test should refer to the rules, this guidance is meant only as a help in interpreting the requirements of the rules.

A local government wishing to use the test must meet several requirements. These include an investment grade bond rating or certain financial ratios, an unqualified financial statement, and certain other requirements.

### *Financial Tests*

To use the local government financial test a local government must meet the requirements of a minimum bond rating or satisfy a financial ratio requirement. Only one of the requirements must be met.

The bond rating requirement is that the local government have an uninsured investment grade general obligation bond rating by either Moody's or Standard & Poor's. An uninsured general obligation bond rating is required because when insurance is used the rating is for the insurance company and not the local government. If the local government bonds are all insured but an uninsured rating can be shown, the Executive Secretary may use this rating. The required ratings are as follows:

- The rating by Moody's must be Aaa, Aa, A or Baa. Moody's has broken the Baa rating down to Baa1, Baa2, and Baa3. All three subdivisions of the Baa rating are considered investment grade by Moody's and a rating of Baa3 or better will satisfy the requirements of the test.
- The Standard & Poor's rating must be AAA, AA, A, or BBB.

A local government that does not have any outstanding general obligation bonds, that has only insured bonds, that has bonds rated by a company other than Moody or Standard & Poor, or that only has unrated general obligation bonds, may qualify to use the financial test if it satisfies both a liquidity ratio and a debt service ratio. The ratios as found in UAC R315-309-3(7)(b)(ii) are:

- a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and
- a ratio of annual debt service to total expenditures less than or equal to 0.20.

The first ratio looks at the ability of the local government to fund the closure and post-closure care costs with current funds and the second ratio looks at the financial stability of the local government seeking to use the test.

### *Compliance with Generally Accepted Accounting Principles*

The local government financial statement must be prepared in accordance with Generally Accepted Accounting Principles (GAAP). This requirement should not be a problem for local governments in Utah

as government financial statements are required by Utah law to meet this standard.

#### *Limits on Local Government Test Use*

The solid waste rules list several conditions that, if they exist, will disqualify a local government from using the test. In most cases these disqualifications are not open for review. Cases that allow for review and case specific approval by the Executive Secretary are noted in the following discussion.

#### *Bond Default or Low Bond Rating*

If a local government is in default on any general obligation bonds it is not eligible to use the local government test. This is true even if it has a current bond rating that is above the standard or if the ratio test can be met.

A local government that has any outstanding bonds that are rated below the standard can not use the local government test even if they can meet the ratios requirements. Although the current bond rating is used for the test, any existing bonds rated below the standard will cause disqualification.

#### *Operating Deficit Limit*

Whether a local government meets the bond rating requirement or the financial ratio alternative, it is disqualified from using the financial test if its financial statements prepared in accordance with GAAP show an operating deficit equal to five percent or more of its total annual revenue for each of the past two years.

#### *Adverse or Qualified Auditor's Opinion*

A local government is also disqualified from using the financial test if an audit of its most recent financial statement (prepared in accordance with GAAP) receives an adverse opinion, disclaimer of opinion, or other qualified opinion. On a case-by-case basis, the Executive Secretary may allow the use of the test when the qualification is insufficient or is not related to the financial status of the local government.

#### *Disclosure*

Utah law and GAAP require that a local government using the local government test disclose the liability that is incurred on the annual financial report. This disclosure should show the estimated closure and post-closure costs as shown in the permit application and must be updated annually.

#### *Annual Update and Reporting*

As with all other financial assurance methods a local government using the local government test must update the cost estimates for closure and post-closure care annually. After the cost have been updated the local government must demonstrate that it meets the local government test with the new costs included. Because the local government test is a test of the current ability of the local government owner or operator of a landfill to pay closure and post closure costs from current revenue, the local government must demonstrate that it meets the requirements of the test each year.

As part of the annual report due on March 1<sup>st</sup> of each year the local government must submit all information required to prove qualification for the test, using the updated cost estimate. This qualification must be done even if the current year's cost estimate has been reduced from last year's. The submittal

must include all information required in the original submittal and can not refer to documents submitted in previous years.

#### *Local Government Guarantee*

Utah solid waste rule, UAC R315-309-3(8), allows a local government owner or operator of a solid waste facility to meet the financial responsibility requirements for the facility using the guarantee provided by another local government (the guarantor). Guarantees, like other third-party mechanisms, such as letters of credit or surety bonds, ensure that a third party is obligated to cover the costs of closure, post-closure care, or corrective action in the event that the owner or operator fails to conduct the required activities. At the same time, a guarantee is an attractive compliance option because guarantees are generally much less expensive than other third-party mechanisms.

To comply with the requirements of the local government guarantee, the owner or operator must submit to the Executive Secretary a certified copy of the guarantee contract and copies of all financial test documentation that is required of the guarantor as specified in the local government financial test. The terms of the guarantee contract must specify that, if the owner or operator fails to perform closure, post-closure care, or corrective action in accordance with the requirements of the solid waste rules, and the permit the guarantor will either:

- carry out those activities or pay the costs of having them conducted by a third party (performance guarantee), or
- fund a trust to pay the costs of the activities (payment guarantee).

The required documentation must be submitted and approved, in the case of closure and post-closure care, prior to the initial receipt of waste or on the date required in the permit, or in the case of corrective action, no later than 120 days following selection of a corrective action remedy. The financial test documentation from the guarantor must be updated annually, in accordance with the requirements of the local government financial test and submitted with the annual report.

Guarantors must meet the conditions of the local government financial test and do so each year as required in the test. Only another local government within the state may be a guarantor under the local government test. The documentation required of the guarantor is the same as that required of a local government financial test user.

Utah solid waste rules require that guarantors agree to remain bound under this guarantee for so long as the owner or operator must comply with the applicable financial assurance requirements. Guarantors may, however, initiate cancellation of the guarantee by sending notice to the Executive Secretary and to the owner or operator. The rule provides that such cancellation cannot become effective earlier than 120 days after receipt of such notice by both the Executive Secretary and the owner or operator and establishment of another financial assurance method. If an alternative financial assurance method is not in place the guarantor continues to be responsible for the costs assured under the guaranty.

## **Corporate Financial Test**

Utah rules allow the use of a financial test to assure that a firm is capable of covering the cost of closure and post-closure care for landfills operated by the company. The test is not assuring that the money is available for closure but that the company has the financial strength to cover the costs at the time of closure.



The corporate test, as found in (UAC) R315-309-3(9), has several requirements. These are a bond rating or financial ratio requirement, a domestic asset requirement, a chief financial officer letter, and an accountant's opinion. Under some conditions a special report from the firm's independent certified public accountant may be required.

The following discussion of each area of the corporate financial test is intended to help applicants for solid waste permits meet the requirements of the rules. It is intended as guidance and does not take the place to the rule. Anyone intending to use the corporate financial test should refer to UAC R315-309-3(9) and must meet the requirements found in this rule.

The rules has two general components, the financial component and the record keeping/reporting component. The financial component consists of the minimum tangible net worth, the bond rating or ratios test, and the domestic assets requirement. The record keeping/reporting component consists of the chief financial officer letter, accountant's opinion, special report and the annual update

#### *Minimum Tangible Net Worth*

The Utah solid waste rule requires firms using the financial test to have a tangible net worth at least equal to the sum of the costs they seek to assure through a financial test plus \$10 million. Tangible net worth means the tangible assets that remain after deducting liabilities. Tangible assets do not include intangibles such as goodwill or rights to patents and royalties.

A firm that has already recognized all of its environmental obligations as liabilities on its financial statements may utilize the financial test so long as it has a minimum tangible net worth of \$10 million and meets all of the other components of the test.

A firm seeking to use the corporate financial test must include cost estimates for all environmental obligations that it assures through a financial test when demonstrating that it meets the \$10 million net worth requirement. Examples of other environmental obligations that must be included are those related to underground injection control facilities, petroleum underground storage tank facilities PCB storage facilities and hazardous waste treatment, storage and disposal facilities. To meet the test requirements a firm would have to have a tangible net worth of \$10 million plus the total of all the cost for environmental liabilities assured through a test.

#### *Financial Tests*

To use the financial test a firm must meet the requirements of a minimum bond rating or satisfy a financial ratio requirement. A firm need not meet both the bond rating requirement and the ratio requirement.

The bond rating requirement is found in R315-309-3(9)(a)(i). The rule requires that the firm have an unsecured investment grade bond rating rated by either Moody's or Standard & Poor's.

- The rating by Mood's must be Aaa, Aa, A or Baa.
- The Standard & Poor's rating must be AAA, AA, A, or BBB.

Collateralized bonds can receive a rating that is not indicative of the overall strength of the firm that issues it, but rather of the collateral backing it. Utah solid waste rules disallow the use of ratings based on collateralized bonds. Although not used frequently by corporations, insured bond ratings are not allowed to be used for financial assurance under Utah solid waste rules.

The use of senior unsecured debt is also required by Utah solid waste rules. A firm may have ratings on

several types of debt with some having a rating higher than that on senior debt. However the rating on senior debt is the most indicative of the financial status of the firm and is the rating required by Utah solid waste rules.

If a firm does not have a bond rating; the rating is for secured bonds; or the firm does not wish, for any reason, to use the bond rating test, the firm may use the ratio test. However, a firm that has a rating for senior unsecured debt that is below the rating allowed by Utah rules may not use the ratio test to qualify for the corporate test even if the firm can meet the ratio requirements. To use the ratio test the firm must meet the minimum requirement for one of the two ratios allowed. A firm using the ratio test does not have to meet both ratios. These ratios, as found in UAC R315-309-3(9)(a)(i)(B)&(C)

- The firm must have a debt-to-equity ratio of less than 1.5 based on the ratio of total liabilities to net worth, or
- the firm must have a profitability ratio of greater than 0.10 based on the ratio of the sum of net income plus depreciation, depletion, and amortization, minus \$10 million, to total liabilities.

#### *Assets Requirement*

Utah solid waste rules require that any firm wishing to use the financial test have assets within the United States at least equal to the costs that the firm is seeking to assure. The rule does not require the assets to be within Utah. The domestic asset requirement is intended to ensure that the state will have access to funds in the event of bankruptcy of the firm.

#### *Chief Financial Officer's Letter*

A firm wishing to use the corporate financial test must first have a closure and post-closure cost estimate that is based on the cost of these activities as conducted by an independent third party. Once these costs are calculated, the firm establishes that it can meet one of the three financial tests and that it meets the domestic asset requirement. The chief financial officer (CFO) of the firm must submit a letter to the Executive Secretary stating that the firm has complied with the criteria of the test. Specifically, the letter must list all cost estimates for all environmental obligations covered by a financial test, and provide evidence demonstrating that the firm satisfies the financial criteria of the test including:

- minimum tangible net worth,
- bond rating, debt-to-equity ratio or profitability ratio, and
- domestic asset requirement.

#### *Accountant's Opinion*

Utah solid waste rules require that the firm submit, to the Executive Secretary, the opinion from the independent certified public accountant of the firm's financial statements for the latest completed fiscal year. This opinion must be an unqualified opinion from the accountant demonstrating that the firm has prepared its financial statements in accordance with generally accepted accounting principles. Generally, an adverse opinion, disclaimer of opinion, or any qualification in the opinion would disqualify the firm from using the corporate financial test. However, the Executive Secretary may evaluate qualified opinions on a case-by-case basis, and accept such opinions if the matters which form the basis for the qualified opinion are insufficient to warrant disallowance of the test.

### *Special Report from the Independent Certified Public Accountant*

A firm wishing to use the corporate financial test may be required to submit, to the Executive Secretary, a special report from an independent certified public accountant. This special report is required to confirm the data used in the chief financial officer's letter, to pass the financial ratio test, were appropriately derived from the audited, year-end financial statements or any other audited financial statements filed with the Securities & Exchange Commission. This report would not be required if the CFO uses financial test figures directly from the audited year end financial statements or any other audited financial statements filed with the Securities & Exchange Commission or if the bond rating is used. However, this report is required if the CFO letter uses data that are derived from and are not identical to the data in the audited annual financial statement or other audited financial statements submitted to the Securities & Exchange Commission.

A special report from an independent certified public accountant is required when a firm proposes to meet the tangible net worth requirement on the basis of having recognized all of the environmental obligations covered by a financial test as liabilities in the audited financial statements. The report should assure that these liabilities have been recognized and that at least \$10 million in tangible net worth remains after any guarantees have been extended.

### *Annual Update*

As with all other financial assurance methods a firm using the corporate financial test must update the cost estimates for closure and post-closure care annually. After the cost have been updated the firm must demonstrate that it meets the corporate financial test with the new costs included. Because the corporate financial test is a test of the current ability of the owner or operator of a landfill to pay closure and post closure costs from current revenue the firm must qualify each year.

As part of the annual report, due on March 1<sup>st</sup> of each year, the firm must submit all information required to prove qualification for the test, using the updated cost estimate. This qualification must be done even if the current year's cost estimate has been reduced from last year's. The qualification submittal must include all information required in the original submittal and can not refer to documents submitted in previous years.

### *Corporate Guarantee*

Utah solid waste rule, UAC R315-309-3(10), allows a solid waste facility owner or operator to meet the financial responsibility requirements for their landfill using the guarantee provided by another private firm (the guarantor). Guarantees, like other third-party mechanisms, such as letters of credit or surety bonds, ensure that a third party is obligated to cover the costs of closure, post-closure care, or corrective action in the event that the owner or operator goes bankrupt or fails to conduct the required activities. At the same time, a guarantee is an attractive compliance option for owners and operators because guarantees are generally much less expensive than other third-party mechanisms.

To comply with the requirements of the corporate guarantee, the owner or operator must submit to the Executive Secretary a certified copy of the guarantee contract and copies of all financial test documentation that is required of the guarantor as specified in the corporate financial test requirements. A sample of a corporate guarantee can be found in Exhibit E. The terms of the guarantee contract must specify that, if the owner or operator fails to perform closure, post-closure care, or corrective action in accordance with the requirements of the solid waste rules and the permit, the guarantor will either:

- carry out those activities or pay the costs of having them conducted by a third party (performance guarantee), or

- fund a trust to pay the costs of the activities (payment guarantee).

The required documentation must be submitted and approved, in the case of closure and post-closure care, prior to the initial receipt of waste or on the date required by the permit, or in the case of corrective action, no later than 120 days following selection of a corrective action remedy. The financial test documentation from the guarantor must be updated annually, in accordance with the requirements of the corporate financial test and submitted with the annual report.

The rule allows three types of qualified guarantors:

- The parent corporation or principal shareholder of the owner or operator (i.e., a corporate parent or grandparent),
- a firm whose parent company is also the parent company of the owner or operator (a corporate sibling), or
- other related and non-related firms with a "substantial business relationship" with the owner or operator (including subsidiaries of the owner or operator).

Guarantors must meet the conditions of the corporate financial test and do so each year as required in the test.

The documentation required of the guarantor is the same as that required of a corporate financial test user with either one or two additional requirements depending upon the relationship of the guarantor to the owner or operator. First, for all users of the guarantee, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. Second, in cases where the guarantor is not a corporate parent, grandparent, or sibling, the letter from the chief financial officer also must address the "substantial business relationship" that exists between the owner or operator and the guarantor. In particular, if the guarantor is a firm with "a substantial business relationship," the letter must describe the relationship and the consideration received from the owner or operator in exchange for the guarantee, which are necessary to ensure that the contract is valid and enforceable.

"Substantial business relationship" is defined in the federal hazardous waste rules as "the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable." The federal definition may provide some assistance in deciding what a valid relationship is but no single legal definition exists of what constitutes a business relationship between two firms that would justify upholding a guarantee between them.

State solid waste rules require that guarantors agree to remain bound under this guarantee for so long as the owner or operator must comply with the applicable financial assurance requirements. Guarantors may, however, initiate cancellation of the guarantee by sending notice to the Executive Secretary and to the owner or operator. The rule provides that such cancellation cannot become effective earlier than 120 days after receipt of such notice by both the Executive Secretary and only if the owner or operator has established another financial assurance method. If an alternative financial assurance method is not in place the guarantor continues to be responsible for the costs assured under the guaranty.

## **Other Financial Assurance Mechanisms**

Financial assurance mechanisms other than those listed in the solid waste rules may be approved by the Executive Secretary. The criteria that the financial mechanism would need to meet are the following:

- Ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;
- Ensure that funds will be available in a timely fashion when needed;
- Guarantee the availability of the required amount of coverage from the effective date of the requirements under the solid waste rules, or prior to the initial receipt of waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected until the owner or operator is released from financial assurance requirements; and
- be legally valid, binding, and enforceable under State law.

## **Combined Financial Assurance Mechanisms**

Utah solid waste rules, in most cases, allow the use of more than one financial assurance mechanism by the owner or operator of a disposal facility. Use of combined mechanisms must be approved by the Executive Secretary and the total assurance must be sufficient to meet the closure and post-closure care requirements. The corporate financial test and the local government financial test can not be used in combination with other tests. The local government test may not be used when a local government has closure and post-closure care liabilities greater than 43% of its annual revenue. In the case of a local government that has environmental obligations that exceed 43% of its annual revenue it may use another financial assurance mechanism to cover the costs over the 43% limit.

# Exhibit A

ESCROW AGREEMENT

I. SUMMARY

A. Parties to the Agreement:

1. Depositor: \_\_\_\_\_ (the "Entity")  
Address: \_\_\_\_\_  
\_\_\_\_\_

Contact: \_\_\_\_\_ Tel. No. \_\_\_\_\_  
\_\_\_\_\_ Tel. No. \_\_\_\_\_

2. State Agency: Utah Division of Solid & Hazardous Waste (the "State")  
Address: P.O. Box 144880  
Salt Lake City, Utah 84114-4880  
\_\_\_\_\_

Contact: Ralph Bohn, Section Mgr. Tel. No. 801-538-6170  
\_\_\_\_\_ Tel. No. \_\_\_\_\_  
\_\_\_\_\_ Tel. No. \_\_\_\_\_

3. Escrow Agent: Utah State Treasurer (the "Treasurer")  
215 State Capitol  
Salt Lake City, Utah 84114

Contact: Robert C. Kirk, Financial Manager  
Stephanie Baldes, Accountant

Telephone: (801)538-1042 Telefax: (801)538-1465 Toll free: 800-395-7665

B. Deposit Amount(s):

1. Principal amount \$ \_\_\_\_\_ (the "Proceeds")

2. Additional amount(s), if any:

\$ \_\_\_\_\_ From: \_\_\_\_\_  
\$ \_\_\_\_\_ From: \_\_\_\_\_  
\$ \_\_\_\_\_ From: \_\_\_\_\_

C. Authorizing Resolution:

\_\_\_\_\_  
\_\_\_\_\_ (the "Instrument")

D. Project Description:

\_\_\_\_\_  
\_\_\_\_\_ (the "Project")

This Summary is an integral part of the Escrow Agreement

## II. AGREEMENT

A. The undersigned hereby deliver to the Treasurer, the Proceeds and Additional amount(s) to be held and disposed of by the Treasurer in accordance with the duties, instructions, and upon the terms and conditions hereinafter set forth in this Escrow Agreement to which the undersigned hereby agree:

1. For purposes of this Escrow Agreement and this Escrow Agreement only:
  - (a) The Treasurer shall not incur any liability in acting upon any written authorization and request delivered hereunder and believed by the Treasurer to be genuine and to be signed by the proper parties.
  - (b) The Treasurer may consult with legal counsel in the event of any dispute or question as to the construction of the Treasurer's duties hereunder and shall not be held to any liability for acting in accordance with advice so received.
  - (c) The Treasurer shall have a first lien on the moneys held by it hereunder for its compensation and for any costs, liability or expense or counsel fees it may incur.
2. In the event of any disagreement between the undersigned or any of them, and/or any other person, resulting in adverse claims and demands being made in connection with or for any moneys involved herein or affected hereby, the Treasurer shall be entitled at its option to refuse to comply with any such claim or demand, so long as such disagreement shall continue, and in so refusing the Treasurer may refrain from making any delivery or other disposition of any moneys involved herein or affected hereby and in so doing the Treasurer shall not be or become liable to the undersigned or any of them or to any person or party for its failure or refusal to comply with such conflicting or adverse demands, and the Treasurer shall be entitled to continue so to refrain and refuse so to act until:
  - (a) The rights of the adverse claimants have been finally adjudicated in a court assuming and having jurisdiction of the parties and the moneys involved herein or affected hereby; and/or
  - (b) All differences shall have been adjusted by agreement and the Treasurer shall have been notified thereof in writing signed by all of the persons interested.
3. The fees for the usual services of the Treasurer under the terms of this Escrow agreement are set forth in the schedule attached hereto as **Exhibit A**. It is agreed that additional compensation shall be paid to the Treasurer for any additional or extraordinary service it may be requested to render hereunder, and the Treasurer shall be reimbursed for any out-of-pocket expenses (including, without limitation, fees of counsel) reasonably incurred in connection with additional or extraordinary services.
4. The Entity and the State hereby agree that the deposit of the Proceeds shall constitute compliance with applicable deposit and investment provisions of the Instrument.
5. The duties of the Treasurer under the terms of this Escrow Agreement are as follows:
  - (a) The Treasurer shall receive into a separate fund (the "Escrow Account") Proceeds and any additional amounts to be used in connection with the Project.
  - (b) The Treasurer shall reimburse Entity in amounts authorized in writing by the Entity and the State.
  - (c) Each authorization must be signed by one official from both the Entity and the State, except as provided in (i) of this section, and shall be substantially the same as the form attached as Exhibit B. On behalf of the Entity, the written authorization and request shall be signed by any one of the officials of the Entity identified in Section I.A. 1. above. On behalf of the State, the written authorization and request shall be signed by any one of the officials of the State identified in Section I.A.2. above. The Treasurer assumes no responsibility for expenditure



of moneys paid out of the Escrow Account pursuant to a written authorization and request properly signed and delivered the Treasurer as provided herein.

- (i) If the Entity fails to provide closure, post-closure, or corrective action of the solid waste management facility as required by the *Utah Solid Waste Permitting and Management Rules* and the Entity's solid waste disposal permit, the Executive Secretary will issue an order to close under the authority of Section 19-6-107(7) of the Utah Solid and Hazardous Waste Act. Upon completion of the Administrative process, including the Entity's right to contest and appeal the administrative action, the State may independently request, in writing, reimbursement to a State-approved and authorized third party for the costs related to the third party's activities for closure, post-closure or corrective actions at the facility.
- (d) If a written authorization and request indicates that an amount (the "Retained Amount") payable to a Provider is to be held for retainage pending completion of the Project or the lapse of time, the Treasurer shall segregate such amount and shall invest the Retained Amount in an interest-bearing account (the "Separate Account"), the interest on which shall accrue for the benefit of the Provider. The Retained Amount and all accrued interest thereon shall be disbursed by the Treasurer in the same manner as provided in paragraph 5(b) hereof. All fees charged or incurred by the Treasurer relating to the establishment, investment and disbursement of the Separate Account shall be borne solely by the Provider and may be withheld by the Treasurer from the Separate Account prior to the disbursement thereof; provided, however, that if such fees are borne by the Separate Account, and if the interest earned on the Separate Account is less than the amount of such fees, then the fees withheld from such Separate Account shall not exceed the interest earned and the balance of such fees shall be paid by the Entity.
- (e) The funds deposited by the parties hereto in the Escrow Fund and in any Separate Account shall be invested by the Treasurer in the Utah Public Treasurers' Investment Fund established by Section 51-7-5 of the Utah Code. All interest earned on moneys held in the Escrow Account shall be retained therein and disbursed as provided herein.
- (f) The Treasurer shall report at least monthly concerning the receipts, disbursements and status of the Escrow Account. The reports shall be mailed to the Entity and to the State at their respective addresses as shown in Section I.A. above. Notification of changes of address, if any, shall be in writing and mailed to the parties at their respective addresses as shown in Section I.A. above.
- (g) This Escrow Agreement will be terminated after payment of the fees and out-of-pocket expenses of the Treasurer, and upon liquidation of the Escrow Account as provided herein. This Escrow Account, upon the earlier to occur of:
  - (i) receipt by the Treasurer of a written authorization and request, signed as provided in paragraph 5(c) hereof, stating that the acquisition, construction, improvement and extension of the Project is complete, that all obligations and costs in connection with the Project which are payable out of the Escrow Account have been paid and discharged, and that the Treasurer is authorized and directed to transfer all moneys in the Escrow Fund to the Entity or such other disposition as may be agreed by the State and the Entity; or
  - (ii) receipt by the Treasurer of a written certificate of the State, signed by the appropriate representatives thereof as identified in paragraph 5(c) hereof, stating that at least months have expired from the date of this Agreement and that all remaining moneys in the Escrow Account are to be transferred to the State as a prepayment on the Bond purchased by the State or such other disposition as may be specified by the State.

6. This Agreement may be modified or amended only by a written Amendment attached to this Agreement and signed by the parties to this Agreement.

DATED this \_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_.

Entity: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest and Countersign:

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE: Utah Division of Solid and Hazardous Waste

By: \_\_\_\_\_

Title: Executive Secretary  
Utah Solid & Hazardous Waste Control Board

Accepted:

Utah State Treasurer

By: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A

### Fees due to State Treasurer as Escrow Agent

---

Maximum annual fee is 10 basis points (one-tenth of one percent (.001)) applied to the average daily balance in each account. The fee is assessed monthly based on the actual number of days in the month divided by 360 days.

Minimum annual fee is zero.

The Treasurer intends to deduct the administrative fee from gross earnings of each account before crediting earnings to the account(s). The amount of such fees is not reflected on monthly statements to the Entity, and is payable only from gross earnings on the account(s).

Entity shall not be liable to the Treasurer for any other costs or expenses for usual services. Usual services include:

1. Acceptance of funds delivered for deposit.
2. Deposit of funds and issuance of Treasurer's Receipt.
3. Investment of all funds delivered to Treasurer.
4. Credit net interest earnings to designated account(s) on a monthly basis.
5. Reimburse entity for project costs pursuant to receipt of a written authorization and request properly signed and delivered to the Treasurer.
6. Prepare and deliver to Entity and State a monthly accounting showing all deposits, withdrawals, interest credits and rate, ending balance and average balance for each account.

Entity will be liable to the Treasurer for out-of-pocket expenses resulting from any additional or extraordinary service Treasurer is requested to render and reasonably incurs in connection with additional or extraordinary services.

EXHIBIT B -1

WRITTEN AUTHORIZATION AND REQUEST FOR REIMBURSEMENT  
FROM ESCROW FUND

TO: The Utah State Treasurer, as Escrow Agent (the "Treasurer").

DATE: \_\_\_\_\_

WRITTEN REQUEST NO.: \_\_\_\_\_

I, the undersigned authorized officer of \_\_\_\_\_, (the "Entity"),  
do hereby certify and request to the Treasurer as follows:

7. Pursuant to the provisions of the Escrow Agreement by and between the Entity, the State and the Treasurer dated \_\_\_\_\_, (the "Escrow Agreement"), the undersigned hereby authorizes and requests a reimbursement from the Escrow Account to pay the amounts shown on the attached Payment Schedule.
8. Each payment proposed to be made as set forth on the Payment Schedule has been incurred and is a proper charge against the Escrow Account.
9. To the extent that the payment of any item set forth on the Payment Schedule is for other than work, materials, equipment or supplies, in connection with this authorization and request, the undersigned certifies that each payment proposed to be made on the Payment Schedules is a proper charge against the Escrow Account, is a reasonable amount and has not been heretofore included in a prior Written Authorization and Request for Reimbursement for the Escrow Account.
10. This Written Authorization and Request, including the Payment Schedule attached hereto, shall be conclusive evidence of the facts and statements set forth herein.
11. A copy of this Written Authorization and Request is being kept on file in the official records of the Entity.

The terms used herein which are defined in the Escrow Agreement shall have the respective meanings therein assigned to them.

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT B-2

I/we, the undersigned authorized officer(s) of the State, do hereby certify and request to the Treasurer as follows:

1. I/we have reviewed the foregoing statements of the authorized officer of the Entity attached hereto, and on behalf of the State approve the request for payment from the Escrow Fund made therein; provided that the State has not independently verified the statements of such authorized officer of the Entity attached hereto and makes no representations or certifications with respect thereto.
2. A copy of this Written Authorization and Request is being kept on file in the official records of the State.

The terms used herein shall have the same meanings assigned to them in the attached statements of the authorized officer of the Entity.

Dated the date appearing at the top of the attached statements of the authorized officer of the Entity.

STATE:

By: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT B -3

REIMBURSEMENT SCHEDULE

Check No.	Person or Firm	Amount	Purpose
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Reimbursement for the above listed payments totaling \$\_\_\_\_\_ is to be made to \_\_\_\_\_  
\_\_\_\_\_ (“Entity”) by transfer of funds from the Escrow Account (PTIF#\_\_\_\_\_) to  
(CHECK ONE):

\_\_\_\_\_ Entity’s general account in the Public Treasurer’s Investment Fund  
(PTIF#); or to

\_\_\_\_\_ Entity’s checking account at \_\_\_\_\_ (“Bank”).  
Account number \_\_\_\_\_

**RETAINAGE REQUEST**

In addition to the above listed reimbursement, transfer the following retainage amounts:

From Escrow Acct.#	To Retainage Acct.#	For Contractor (name)	#Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Contact Person at time of Wire Transfer \_\_\_\_\_  
(name) (phone #)

UTAH STATE TREASURER  
UTAH PUBLIC TREASURERS' INVESTMENT FUND  
New Account Application and Change Form

DATE \_\_\_\_\_

A. Title of Account \_\_\_\_\_

B. PTIF Account Number(s) \_\_\_\_\_

**ACTION:**

<input type="checkbox"/> Create New PTIF Account (Sec. A,C,D,E,F)	<input type="checkbox"/> Change Bank/Account (Sec A,B,E,F).	<input type="checkbox"/> Add Bank/Account (Sec. A,B,E,F)
<input type="checkbox"/> Change Address (Sec. A,B,D,F)	<input type="checkbox"/> Change Authorized Individuals (Sec. A,B, C,F)	<input type="checkbox"/> Change Internet Access (Sec. A,B,C,F)

**C. Individuals Authorized to Make Deposits/Withdrawals:**

NAME TITLE PHONE INTERNET ACCESS (Y/N) \*

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

D. PTIF Statement Mailing Address: \_\_\_\_\_

Attn: \_\_\_\_\_  
\_\_\_\_\_

**E. Bank (Depository) Information:**

**New/Additional Bank**

**Delete Bank**

a. Name of Bank \_\_\_\_\_

Name of Bank \_\_\_\_\_

b. Account Number \_\_\_\_\_

Account Number \_\_\_\_\_

☐ Checking ☐ Savings ☐ Other \_\_\_\_\_

**F. Authorization:** In accordance with applicable statutes and procedures established by the Utah State Treasurer, we the undersigned hereby authorize the Utah State Treasurer to make the above changes and/or initiate wire and/or automated clearing house (ACH) credit entries and/or debit entries to our bank indicated above. The depository named above is authorized to credit and/or debit the same to such account. This authorization is to remain in full force and effect until the Utah State Treasurer has received written notification from us of its termination.

Signed \_\_\_\_\_  
(Date)

Signed \_\_\_\_\_  
(Date)

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

**TWO SIGNATURES REQUIRED**

Please **attach a deposit slip** and return this form to:

Utah State Treasurer's Office  
215 State Capitol  
Salt Lake City, Utah 84114





## Exhibit B

**Solid Waste Permitting and Management  
Closure and Post-Closure Care Bond**  
Utah Administrative Code R315-309-3(4)

Bond Amount \$ \_\_\_\_\_ Bond No. \_\_\_\_\_

KNOWN BY THESE PRESENTS:

That we, \_\_\_\_\_ (PRINCIPAL)

of the County of \_\_\_\_\_ State of \_\_\_\_\_

as PRINCIPAL and \_\_\_\_\_ (SURETY)  
as a corporation, duly organized and doing business under and by virtue of the laws of the  
State of \_\_\_\_\_ and authorized to do business in the State of Utah, and duly  
licensed for the purpose of making, guaranteeing, and becoming sole surety upon bonds  
required or authorized by the laws of the State of Utah, as surety, and held and firmly  
bound unto the Executive Secretary, Solid and Hazardous Waste Control Board of the  
State of Utah, P. O. Box 144880, 288 North 1460 West, Salt Lake City, Utah 84114-4880,  
in the penal sum of \_\_\_\_\_, lawful money of the United States of  
America, for the payment whereof well and truly to be made, we bind ourselves, our heirs,  
executors, administrators, successors and assigns, jointly and severally, firmly by these  
presents.

The Condition of the foregoing obligation is such that,

WHEREAS, the above named PRINCIPAL has made application to the Executive  
Secretary for the issuance of a permit to operate a Class \_\_\_\_\_ Landfill under the authority  
of the State of Utah Solid and Hazardous Waste Act, and

WHEREAS, the Executive Secretary, with authority, has enacted rules, Utah Administrative  
Code (UAC) R315-301 through 320 (Rules), regulating the operation of landfills,

WHEREAS, under the terms of said Rules a cash or corporate surety bond in the penal  
sum of \_\_\_\_\_ is required of said PRINCIPAL and a responsible  
surety as financial assurance for closure and post-closure care costs of said landfill payable  
to a Standby Trust as specified hereafter. Said bond is conditioned upon the faithful and  
proper compliance with all of the terms, conditions, provisions, requirements, and  
specifications of landfill closure and post-closure care contained in said landfill permit, UAC  
R315-302-2, and UAC R315-\_\_\_\_\_, not to exceed the bond penalty amount hereof,  
Now, therefore, if the above bound PRINCIPAL shall fully comply with the above stated  
provisions for closure and post-closure care of said Class \_\_\_\_\_ Landfill, then this obligation  
shall be null and void, otherwise to remain in full force and effect.

This bond may be increased by rider or other means as necessary to equal the amount as  
established by the annual up-date of the cost estimate for closure and post-closure care as  
required by UAC R315-309-2(3) and (4) for said Class \_\_\_\_\_ Landfill.

The duration of this bond shall be from the time same is filed with the Executive Secretary until such time as the Executive Secretary may cancel the same or release the SURETY from all liability.

The SURETY may cancel this bond by giving the Executive Secretary 120 days written notice addressed to the Executive Secretary, Solid and Hazardous Waste Control Board. Upon cancellation of this bond, the Executive Secretary shall release the SURETY from all liability.

In the event of default by the PRINCIPAL of any of the prior stated provisions and conditions of closure and post-closure care of said Class \_\_\_\_ Landfill, the SURETY shall deposit the penal sum of this bond into the Standby Trust that has been established in conjunction with this bond. Upon the funding of the Trust, not to exceed the penal sum of this bond, this obligation of the SURETY shall terminate.

Signed and Sealed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Witness:

\_\_\_\_\_

\_\_\_\_\_

(Print Name)

,

\_\_\_\_\_

(Print Name)

Witness:

\_\_\_\_\_

\_\_\_\_\_

(Print Name)

,

\_\_\_\_\_

(Print Name)

**Solid Waste Permitting and Management  
Closure and Post-Closure Care Bond**  
Utah Administrative Code R315-309-3(4)

Bond Amount \$ \_\_\_\_\_ Bond No. \_\_\_\_\_

KNOWN BY THESE PRESENTS:

That we, \_\_\_\_\_ (PRINCIPAL)

of the County of \_\_\_\_\_ State of \_\_\_\_\_

as PRINCIPAL and \_\_\_\_\_ (SURETY)

as a corporation, duly organized and doing business under and by virtue of the laws of the State of \_\_\_\_\_ and authorized to do business in the State of Utah, and duly licensed for the purpose of making, guaranteeing, and becoming sole surety upon bonds required or authorized by the laws of the State of Utah, as surety, and held and firmly bound unto the Executive Secretary, Solid and Hazardous Waste Control Board of the State of Utah, P. O. Box 144880, 288 North 1460 West, Salt Lake City, Utah 84114-4880, in the sum of \_\_\_\_\_, lawful money of the United States of America, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The Condition of the foregoing obligation is such that,

WHEREAS, the above named PRINCIPAL has made application to the Executive Secretary for the issuance of a permit to operate a Class \_\_\_\_ Landfill under the authority of the State of Utah Solid and Hazardous Waste Act, and

WHEREAS, the Executive Secretary, with authority, has enacted rules, Utah Administrative Code (UAC) R315-301 through 320 (Rules), regulating the operation of landfills,

WHEREAS, under the terms of said Rules a cash or corporate surety bond in the penal sum of \_\_\_\_\_ is required of said PRINCIPAL and a responsible surety as financial assurance for closure and post-closure care costs of said landfill payable to a Standby Trust as specified hereafter. Said bond is conditioned upon the faithful and proper compliance with all of the terms, conditions, provisions, requirements, and specifications of landfill closure and post-closure care contained in said landfill permit, UAC R315-302-2, and UAC R315-\_\_\_\_\_, not to exceed the bond penalty amount hereof,

Now, therefore, if the above bound PRINCIPAL shall fully comply with the above stated provisions for closure and post-closure care of said Class \_\_\_\_ Landfill, then this obligation shall be null and void, otherwise to remain in full force and effect.

This bond may be increased by rider or other means as necessary to equal the amount as

established by the annual up-date of the cost estimate for closure and post-closure care as required by UAC R315-309-2(3) and (4) for said Class \_\_\_\_ Landfill.

The duration of this bond shall be from the time same is filed with the Executive Secretary until such time as the Executive Secretary may cancel the same or release the SURETY from all liability.

The SURETY may cancel this bond by giving the Executive Secretary 120 days written notice addressed to the Executive Secretary, Solid and Hazardous Waste Control Board. Upon cancellation of this bond, the Executive Secretary shall release the SURETY from all liability.

In the event of default by the PRINCIPAL of any of the prior stated provisions and conditions of closure and post-closure care of said Class \_\_\_\_ Landfill, the SURETY shall conduct or cause to be conducted the closure and post-closure activities as required in permit # \_\_\_\_\_. Upon the completion of the required activities, not to exceed the penal sum of this bond, this obligation of the SURETY shall terminate.

Signed and Sealed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Witness:

\_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

Witness:

\_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

## Exhibit C

*[ draft specimen document for SOLID WASTE program use only  
This letter of credit must be worded as follows, except that instructions in BRACKETS are to be  
replaced with the relevant information or deleted and the brackets deleted.  
Version - 3Jun2003]*

**[PUT ON FINANCIAL INSTITUTION LETTERHEAD]**

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [\_\_\_\_\_]

DATE: [\_\_\_\_\_]

EXPIRATION DATE [\_\_\_\_\_]

CORPORATION NAME: [\_\_\_\_\_]

\_\_\_\_\_]

FACILITY NAME: [\_\_\_\_\_]

\_\_\_\_\_]

FACILITY PERMIT NO. [\_\_\_\_\_]

---

Executive Secretary, Solid and Hazardous Waste Control Board of the State of Utah  
PO Box 144880  
Salt Lake City, Utah 84114-4880

We hereby issue our IRREVOCABLE STANDBY LETTER OF CREDIT No. [\_\_\_\_\_] in your favor on behalf of [insert owner/operator company name], hereinafter known as the Company, for a sum of [in words] U. S. dollars \$[\_\_\_\_\_], available by your drafts at sight drawn on our institution [insert financial institution's name]. Drafts must be marked "Drawn under [\_\_\_\_\_], IRREVOCABLE STANDBY LETTER OF CREDIT No. [\_\_\_\_\_]," dated today's date.

This IRREVOCABLE STANDBY LETTER OF CREDIT is issued to provide financial assurance to the Executive Secretary of the Solid and Hazardous Waste Control Board for the cost of closure, post-closure maintenance and monitoring, and if necessary, corrective action pursuant to Utah Code Annotated 19-6-108(9)(c) and Utah Administrative Code (UAC) R315-309-3(6), for the solid waste disposal facility known as:

[\_\_\_\_\_] ,  
located at: [\_\_\_\_\_] ,  
[\_\_\_\_\_] ,

Requests to draw on this IRREVOCABLE STANDBY LETTER OF CREDIT must be accompanied by the following documents:

1. Your signed statement as follows: I, (Executive Secretary), certify that I have issued a Notice of Violation or other order to the Company indicating that the Company has failed to comply with the closure, post-closure maintenance and monitoring, or corrective action requirements of UAC R315-301 through 320.  
  
and
2. A copy of the Notice of Violation or other order issued to the Company by the Executive Secretary,

or

3. Your signed statement as follows: I, (Executive Secretary), certify that the Company has failed to provide the Executive Secretary with an extension of Letter of Credit No. \_\_\_\_\_, or with an acceptable replacement irrevocable standby letter of credit or other acceptable financial assurance within the 90 days of receipt of the expiration or cancellation notice by the issuing institution.

and

4. Your sight draft, bearing reference to this IRREVOCABLE STANDBY LETTER OF CREDIT No. \_\_\_\_\_.

Partial drawings are permitted. This original IRREVOCABLE STANDBY LETTER OF CREDIT No. \_\_\_\_\_ must be submitted to us together with any drawings hereunder for our endorsement of any payments effected by us and/or cancellation.

This IRREVOCABLE STANDBY LETTER OF CREDIT is effective as of [date] and shall expire on [(date at least one year later)], but such expiration date shall be automatically extended for a period of at least one year on [date] and on each successive expiration date, unless the issuing institution has cancelled the IRREVOCABLE STANDBY LETTER OF CREDIT by sending notice of cancellation by certified mail to the Executive Secretary and the company 120 days in advance of cancellation.

In the event the Executive Secretary is so notified, any unused portion of the credit shall be available upon presentation of a sight draft for 120 days after the date of receipt by both the Executive Secretary and [insert owner/operator company name] as shown on the signed return receipts.

Whenever this IRREVOCABLE STANDBY LETTER OF CREDIT is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into a STANDBY TRUST of the [insert owner's or operator's name] in accordance with the Executive Secretary's instructions.

The ISSUING INSTITUTION further warrants that this IRREVOCABLE STANDBY LETTER OF CREDIT conforms in all respects with the requirements Utah Administrative Code R315-309, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of this IRREVOCABLE STANDBY LETTER OF CREDIT that is inconsistent with such regulations is hereby amended to eliminate such inconsistency.

\_\_\_\_\_

Type Name of Authorized Representative

\_\_\_\_\_

Signature

Institution

\_\_\_\_\_

Title

Address

This IRREVOCABLE STANDBY LETTER OF CREDIT No. \_\_\_\_\_ is subject to the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code.



## Exhibit D



Utah Department of Environmental Quality, Division of Solid and Hazardous Waste

## SOLID WASTE LANDFILL FINANCIAL ASSURANCE

### INSURANCE CERTIFICATE FOR CLOSURE OR POST-CLOSURE CARE

#### Attach to Insurance Policy

The insurance certificate for closure and post-closure care should be worded as follows and information inserted as requested:

Insurer's Name (herein called the **Insurer**):

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

City/State/Zip Code:

\_\_\_\_\_

Insured's Name (herein called the **Insured**):

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

City/State/Zip Code:

\_\_\_\_\_

Facilities Covered: [List for each facility on a separate attachment: the facility name, permit number, address, and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered must total the face amount shown below)].

Face Amount: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Effective Date: \_\_\_\_\_

#### Check Appropriate Box

The Insurer hereby certifies that it has issued to the Insured, the policy of insurance identified above, to provide financial assurance for: ☐ **Closure** or ☐ **Post-Closure Care** or ☐ **Closure and Post-Closure Care** for the facilities identified on the Attachment.

The Insurer further warrants that such policy conforms in all respects with the requirements of Utah Administrative Code (UAC) R315-309-3(5). It is agreed that any provision of the policy inconsistent with UAC R315-309-3(5), is hereby amended to eliminate such inconsistency.

#### THE FOLLOWING STIPULATION FOR POST CLOSURE CARE ONLY

As per the requirements of Subtitle D federal regulations 40 CFR 258.74(d)(7), the Insurer will increase the face amount of the policy annually beginning on the day that post-closure care begins. The insurer agrees that the amount of the annual increase will be equivalent to the current face amount of the policy (less any payments already made) multiplied by 85 percent of:

#### Check Appropriate Box

☐ The most recent investment rate.

**G** The equivalent coupon issue yield announced by the U. S. Department of Treasury for 26-week treasury securities.

The Insurer also commits to the following:

**Guarantee of Funds:**

Funds necessary to meet the costs of closure and/or post-closure care will be available whenever they are needed. Funds will be available to close the solid waste facility whenever final closure occurs or to provide post-closure care for the solid waste facility whenever the post-closure care period begins, whichever is applicable.

**Payout:**

Once closure begins, the Insurer will be responsible for paying out funds to the owner or operator or other person(s) authorized to conduct closure or post-closure care up to an amount equal to the face amount of the policy.

**Assignment of Policy:**

The Insurer will allow assignment to a successor owner or operator. Assignment may be conditional upon consent of the Insurer provided such consent is not unreasonably refused.

**Automatic Renewal:**

The insurer will provide the owner or operator with the option of renewal at the face amount of the policy.

**Non-Cancellation:**

The insurer may not cancel, terminate or fail to renew the policy except for failure of the owner or operator to pay the premium.

The Insurer further certifies that it is licensed to transact the business of insurance, or is eligible to provide insurance, as an excess or surplus lines insurer in one or more states and has both of the following:

A duplicate original of the insurance policy, including all endorsements thereon, is being submitted along with a certificate of insurance to the Executive Secretary of the Solid and Hazardous Waste Control Board.

Authorized signature for Insurer: \_\_\_\_\_  
Name of person signing: \_\_\_\_\_  
Title of person signing: \_\_\_\_\_  
Signature of Witness or Notary: \_\_\_\_\_

Date \_\_\_\_\_

**When completed send this document to:**

Executive Secretary, Solid and Hazardous Waste Control Board  
PO Box 144880  
Salt Lake City, Utah 84114-4880

# Exhibit E

**STATE OF UTAH**  
**SOLID WASTE MANAGEMENT FACILITY CORPORATE GUARANTEE**  
**TO DEMONSTRATE FINANCIAL ASSURANCE**

Closing ☐ Long-Term Care ☐ Corrective Action ☐

Check Appropriate Box(es)

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in 40 CFR 264.141(h)"] to the Executive Secretary of the Utah Solid and Hazardous Waste Control Board.

Recitals

1. Guarantor meets or exceeds the financial test criteria as specified in Utah Administrative Code (UAC) R315-309-3(9) and agrees to comply with the reporting requirements for guarantors as specified in UAC R315-309-3(10)(d) and (e).
2. [Owner or operator] owns or operates the following solid waste management facility(ies) covered by this guarantee for closure and post-closure care: [List for each facility: name, and address.]
3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by UAC R315-302-3 for the closure and post-closure care of facilities as identified above.
4. For value received from [owner or operator], guarantor guarantees to the Executive Secretary of the Utah Solid and Hazardous Waste Control Board that in the event that [owner or operator] fails to perform closure and post-closure care of the above facility(ies) in accordance with the closure or post-closure plans and other permit requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in UAC R315-309-3-(4)(e), in the name of [owner or operator] in the amount of the current closure and post-closure cost estimates as specified in the permit.
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Executive Secretary of the Utah Solid and Hazardous Waste Control Board and to [owner or operator] that he intends to provide alternate financial assurance as specified in UAC R315-309, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the Executive Secretary of the Utah Solid and Hazardous Waste Control Board by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Executive Secretary of the Utah Solid and Hazardous Waste Control Board of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in UAC R315-309, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to UAC R315-301 through 320.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of UAC R315-309 for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. Guarantor may terminate this guarantee 120 days following notice by certified mail to the Executive Secretary of the Utah Solid and Hazardous Waste Control Board and to [owner or operator], provided that this guarantee may not be terminated unless and until [owner or operator] obtains, and the Executive Secretary of the Utah Solid and Hazardous Waste Control Board approves, alternate closure and post-closure care coverage complying with UAC R315-309.

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in UAC R315-309, and obtain written approval of such assurance from the Executive Secretary of the Utah Solid and Hazardous Waste Control Board within 90 days after a notice of cancellation by the guarantor is received by the Executive Secretary of the Utah Solid and Hazardous Waste Control Board from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Executive Secretary of the Utah Solid and Hazardous Waste Control Board or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and post-closure plan and of amendments or modifications of the facility permit.

13. The persons whose signatures appear below hereby certify that they are authorized to execute this Corporate Guarantee on behalf of [Guarantor Name].

Effective date: \_\_\_\_\_  
[Name of guarantor] \_\_\_\_\_

[Authorized signature for guarantor]\_\_\_\_\_

[Name of person signing]\_\_\_\_\_

[Title of person signing]\_\_\_\_\_

Signature of witness or notary:\_\_\_\_\_

# Exhibit F





## SOLID WASTE LANDFILL FINANCIAL ASSURANCE STANDBY TRUST AGREEMENT

*Financial assurance is required by Title 19, Chapter 6, Part 1 subsection 180(9)(c) Utah Code Annotated 1953 as amended, and Utah Administrative Code R315-309-1. An operating permit shall not be issued unless financial assurance has been filed as a part of an application for a permit.*

This Trust Agreement, the "Agreement," entered into as of \_\_\_\_\_, by  
Date

\_\_\_\_\_, (the AGrantor®) with offices at  
Name of Owner/Operator

\_\_\_\_\_  
Address

\_\_\_\_\_; and  
City/State/Zip Code

\_\_\_\_\_, (the ATrustee®),  
Name of Trustee

incorporated in the state of \_\_\_\_\_ with an address at \_\_\_\_\_;  
Address

\_\_\_\_\_  
City/State/Zip Code

and the Executive Secretary of the Solid and Hazardous Waste Control Board, or authorized representative (the "Executive Secretary"), with an address at Division of Solid and Hazardous Waste, P.O. Box 144880, Salt Lake City, Utah 84114-4880.

### RECITALS

1. The Grantor has made an application for a permit to establish, maintain, and/or operate a landfill within the State of Utah in accordance with Title 19, Chapter 6, The Solid and Hazardous Waste Act (the AAct®) and Utah Administrative Code (UAC) R315-301 through 320 (ARules®).
2. The Act and rules require owners and operators of solid waste landfills to provide financial assurance that funds will be available whenever they are needed to meet the cost of closure, post-closure maintenance and monitoring, and corrective action.
3. The Grantor has elected to establish a standby trust into which the proceeds for a [letter of credit or surety bond] may be deposited to assure all or part of such financial responsibility for the facilities identified therein.
5. The Grantor, acting through its duly authorized officers, has selected the Trustee to be the Trustee under this Agreement.
6. The Trustee is willing to act as the Trustee under the terms of the Agreement. The Trustee is a bank or other financial institution that has the authority to act as a Trustee and whose Trust account operations are regulated and examined by a federal or state agency.
7. The Executive Secretary approves the Trustee selected by the Grantor.

The parties agree as follows:

1. Definitions - As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors and assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "Facility" means the facility or facilities owned and/or operated by the Grantor and identified on Attachment A hereto.

(d) The term "Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board or authorized representative.

2. Identification of Facility or Facilities and Cost Estimates

This Agreement pertains to the facility or facilities, owned and/or operated by the Grantor, as identified on the attached Attachment A. (Complete Attachment A for each facility.) The current closure, post-closure, and corrective action cost estimates or portions thereof, for each facility covered by this Trust Fund are shown separately on Attachment A.

For each facility on Attachment A, include its name, facility Permit number, address, and the amount of closure, post-closure, and/or corrective action financial assurance provided.

The current total cost estimate for the facility, covered by this Agreement is \$\_\_\_\_\_. The portion of this cost estimate which was initially deposited at the establishment of this Trust Fund is \$\_\_\_\_\_ shown separately on the attached Attachment B, and is an itemization of the property or money that the Account consists of initially. Property must consist of cash or securities acceptable to the Trustee. Other property (e.g., real estate) is not acceptable.

These cost estimates will be revised each year and reported as required by from time-to-time by the Grantor as required by UAC R315-309-2(2). Revised cost estimates are not effective until approved by the Executive Secretary.

Approved changes in cost estimates must be reflected in the Trust Agreement and in subsequent payments. The owner/operator is expected to submit a revised Attachment A and Attachment B, whenever the cost estimates are affected by the annual revision of the estimates.

3. The Establishment of the Trust Fund

The Grantor and the Trustee hereby establish a Trust Fund for the exclusive use and benefit of the Executive Secretary as Executive Secretary, and intend that no other party shall have access to said Trust Fund without the express written approval and direction of the Executive Secretary.

The Trust Fund is established initially as consisting of the cash and/or securities, acceptable to the Trustee, described in Attachment B. Such property and all other property subsequently conveyed by the Grantor to the Trustee is collectively referred to as the Trust Fund, together with all earnings and profits therein, less any payments or distributions made by the Trustee pursuant to this Agreement. The Trust Fund shall be held by the Trustee, in Trust, as hereinafter provided.

The Grantor shall separately list on the attached Attachment C, the persons designated to sign orders, requests, and instructions to the Trustee.

4. Payments from the Trust Fund

The Trustee shall make payments from the Trust Fund to the Executive Secretary, the Grantor, or other persons, as instructed in writing by the Executive Secretary.

The Trust Fund so established shall be used solely to provide for the payment of the costs of closure, post-closure, and/or corrective action at the facility or facilities, covered by this Agreement, to reimburse the Grantor, or other persons as specified by the Executive Secretary following procedures of this section, for legitimate expenses in carrying out closure,

post-closure, and/or corrective action activities as approved by the Executive Secretary, or to disburse to the Grantor excess funds as determined by the Executive Secretary not required to be part of this Trust Fund.

If the Executive Secretary issues a notice of violation or other order to the Grantor alleging violation of the closure, post-closure, or corrective action requirements, the Executive Secretary may, after providing the Grantor seven (7) days notice and opportunity for hearing, access the funds in the Trust Fund to complete closure, post-closure maintenance and monitoring, and/or corrective action to the extent necessary to correct such violations.

The Grantor may request the Executive Secretary to authorize the release of funds from a Trust Fund if the Grantor demonstrates that the value of the account exceeds the Grantor's financial assurance obligation. A payment or disbursement from the Fund shall not be made without the prior written approval of the Executive Secretary.

The Grantor shall receive all interest or earnings from a Trust Fund upon its termination.

The Trustee shall ensure the filing of all required tax returns for which the Trust Fund is liable and shall disburse funds from earnings to pay lawfully due taxes owed by the Trust Fund, without permission of the Executive Secretary.

#### 5. Deposits into the Trust Fund

The Grantor shall deposit into the Trust Fund amounts as specified in permit or approved annual modification to the financial assurance amount.

(a) The Trustee undertakes no responsibility for the amount, or adequacy of, nor any duty to collect from the Grantor, any contributions required to be made by the Grantor to the Trust Fund or for contributions required of the Grantor to discharge any liabilities of the Grantor as required by the Act, the rules or any condition of a permit issued pursuant to the Act or rules.

(b) The Trustee shall notify the Executive Secretary in writing whenever contributions are made to the Trust Fund by the Grantor. The facility name and the facility permit number must be included on the notice from the Trustee.

(c) Payments comprising the Account. Payments made to the Trustee for the Account shall consist of cash or securities acceptable to the Trustee.

#### 6. Earnings and Investments of the Trust Assets

Trust Assets shall be invested, by the Trustee, as directed by the Grantor. Earnings and interest of the Trust Assets shall be credited to the financial assurance Trust Fund.

#### 7. Trustee Management of the Trust Fund

The Trustee shall invest and reinvest the principal and income of the Trust Fund and keep the Trust Fund invested, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee subject, however, to the provisions of this Agreement. In investing, reinvesting, exchanging, selling, and managing the Trust Fund, the Trustee will discharge its duties with respect to the Trust Fund solely in the interest of the Grantor and the Executive Secretary, and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims: except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities identified on Schedule A, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or State government; and

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government.

The Trustee shall fully invest the Trust Assets at all times whenever possible, but under no circumstances shall the Trust Assets not be fully invested within three (3) business days of receipt of additional deposits or income.

#### 8. Commingling and Investment

The Trustee is expressly authorized in its discretion to transfer from time-to-time any or all of the assets of the Trust Fund to any common, commingled, or collective Trust Fund created by the Trustee in which the Trust Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other Trusts participating therein so long as such management does not conflict with the requirements of this Trust Fund. To the extent of the equitable share of the Trust Fund in any such commingled escrow, such commingled trust will be part of the Trust Fund.

9. Trustee Compensation and Expenses

The Trustee shall be entitled to reasonable fees for services hereunder and to reimbursement for all proper costs, charges and expenses including, but not limited to, attorney fees and expenses reasonably incurred in connection herewith, which fees and all such costs, charges, and expenses shall be paid from the Trust Fund or by the Grantor.

All taxes of any kind that may be assessed, or levied against, or in respect of the Trust Fund shall be paid from the Trust Fund. Notwithstanding the foregoing, it is the express obligation of the Grantor and the Grantor agrees to pay directly to the Trustee for the benefit of the Trust Fund, on demand, any and all taxes, expenses, costs, and fees occasioned by virtue of the Trust Fund so as to maintain, according to Section 2 of this Agreement, the level, amount, and value of the Trust Fund exclusively available for the purposes for which the Trust Fund has been created, provided further, that should the Trustee utilize any portion of the Trust Fund for costs, expenses, fees, taxes, and the like, the Grantor shall forthwith add to the Trust Fund such assets as will return the Trust Fund to the level, amount, and value required by Section 2 of this Agreement, notwithstanding disbursements by the Trustee.

10. Express Powers of Trustee

Without in any way limiting the powers and discretion conferred upon the Trustee by any other provision of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all instruments that may be necessary or appropriate to carry out the powers herein granted.

(b) To register any securities held in the Trust Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee will at all times show that all such securities are part of this Trust Fund.

11. Duties and Liabilities of Trustee

The acceptance by the Trustee of the duties and obligations of the Trustee under this Agreement is subject to the following terms and conditions:

(a) The Trustee shall be protected in acting, or refraining from acting, upon any written notice, request, waiver, consent, receipt or other paper or document signed by the Executive Secretary that Trustee in good faith believes to be genuine. The Trustee shall have no responsibility to inquire into or determine genuineness or authenticity of any documents or instruments submitted to it as originals and may rely upon an order from a court of competent jurisdiction related to the disbursement of funds from the Trust Fund.

(b) The Trustee shall not be responsible for the collection from the Grantor of payments required to be made by the Grantor to the Trustee hereunder.

(c) If a lawsuit shall arise with respect to the disposition by the Trustee of the Trust Assets held in this Trust Fund pursuant to this Agreement, or any part thereof, the Trustee shall not be liable for refusing to deliver any part of such property that is the subject of the lawsuit unless and until such lawsuit is resolved by a final judgment or order from a court of competent jurisdiction from which no right of appeal exists, or in respect of which any right of appeal has expired without being exercised, or by written Agreement acceptable to the Trustee executed and delivered by the parties hereto.

(d) The Trustee shall ensure the filing of all required tax returns for which the Trust Fund is liable and shall disburse funds from earnings of the Trust Fund to pay lawfully due taxes owed by the Trust Fund.

(e) The Trustee shall, upon receipt of notice provided to the Trustee under Section 16 of this Agreement, maintain records of ownership of the Facility during the time in which the Trust Fund is established.

12. Annual Valuation

The Trustee shall keep all records of this Trust Fund on a calendar-year basis. The Trustee shall make an annual accounting to the Executive Secretary and Grantor within thirty (30) days preceding March 1 that confirms the value of the Trust Fund. Any securities in the Trust Fund shall be valued at market value as of no more than sixty (60) days prior to March 1.

13. Advice of Counsel

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

14. Successor Trustee

Upon the written Agreement of the Grantor and the Executive Secretary, with ninety (90) days prior written notice to the Trustee, the Grantor may replace the Trustee. The Trustee may resign after giving ninety (90) days prior written notice to the Grantor and the Executive Secretary. In either event, the Grantor will appoint a Successor Trustee who will have the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance of the appointment by the Successor Trustee, the Trustee will assign, transfer, and pay over to the Successor Trustee, the Trust Assets constituting the Trust Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a Successor Trustee or for instructions. The Successor Trustee shall specify the date on which it assumes administration of the Trust Fund in writing sent to the Grantor, the Executive Secretary, and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section will be paid as provided in Section 9.

15. Instructions to the Trustee

All orders, requests, and instructions by the Executive Secretary or the Grantor to the Trustee will be in writing, signed by the Executive Secretary or (as applicable) the Grantor, and the Trustee shall act, and in so acting, will be fully protected if acting in accordance with such orders, requests, and instructions. The Trustee will have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Executive Secretary hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests, and instructions from the Executive Secretary, except as provided for herein.

16. Additional Duties of the Grantor

In addition to other duties of the Grantor in this Agreement, the Grantor shall provide written notice to the Trustee if there is a change of ownership of the Facility.

17. Additional Duties of the Executive Secretary

In addition to other duties of the Executive Secretary in this Agreement, the Executive Secretary shall:

(a) Notify the Grantor and the Trustee in writing if the Executive Secretary determines that the Grantor has refused to conduct closure, post-closure maintenance and monitoring, or corrective action at the Facility as necessary to protect the public health, safety or welfare, or the environment, along with the reasons for that determination.

(b) Notify the Trustee of the date of closure of the Facility.

18. Immunity and Indemnification

The Trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust Fund, or in carrying out any directions by the Executive Secretary issued in accordance with this Agreement. Grantor shall indemnify and hold harmless Trustee and Executive Secretary from and against any and all liabilities, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever including, without limitation, the reasonable fees and disbursements of counsel for Trustee or Executive Secretary in connection with any investigative, administrative, or judicial proceeding which may be imposed on, incurred by or assessed against Trustee or Executive Secretary at any time in connection with their performance hereunder, or in any way relating to or arising out of this Agreement or any of the transactions contemplated herein. Neither the Trustee nor the Executive Secretary shall have the right to be indemnified hereunder for its sole negligence or willful misconduct.

19. Notices

All parties to this Agreement are to receive copies of any notices sent to any other party of this Agreement pertaining to the Trust Fund. Notices shall be mailed to the following addresses:

If to Grantor:

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If to Trustee:

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Trust Account Number

If to Executive Secretary:

Executive Secretary, Solid and Hazardous Waste Control Board  
Utah Department of Environmental Quality  
P.O. Box 144880  
Salt Lake City, Utah 84114-4880

20. Amendments

This Agreement may not be modified or amended, except by written Agreement executed by all parties to this Agreement, or by the Trustee and the Executive Secretary if the Grantor ceases to exist, except that this provision does not apply with respect to a change in address in Section 19 of this Agreement. Notice of the change in address shall be given to all parties to this Agreement at least ten (10) business days in advance of such change.

21. Applicable Law

This Agreement is to be, in all respects, governed by the laws of the State of Utah.

22. Counterparts

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

23. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement will not affect the interpretation or the legal efficacy of this Agreement.

24. Irrevocability

Subject to the right of the parties to amend this Agreement as provided in Section 20, this Trust Fund will be irrevocable and will continue until terminated by the written Agreement of the Grantor, the Trustee, and the Executive Secretary, or by the Trustee and the Executive Secretary if the Grantor ceases to exist.

25. Successors and Assigns

Any successors or assigns to any party to this Agreement shall be likewise bound to its terms and conditions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

GRANTOR:

By \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

EXECUTIVE SECRETARY:

By \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

TRUSTEE:

By \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_



STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_,  
a \_\_\_\_\_ corporation, on behalf of the corporation, the Grantor named in the foregoing instrument.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
County, Utah

My Commission expires \_\_\_\_\_

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_,  
a \_\_\_\_\_ corporation, on behalf of the corporation, the Trustee named in the foregoing instrument.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
County, Utah

My Commission expires \_\_\_\_\_

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
by \_\_\_\_\_, \_\_\_\_\_ the Executive Secretary of the Solid and Hazardous Waste Control  
Board, the Executive Secretary named in the foregoing instrument.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
County, Utah

My Commission expires \_\_\_\_\_

## ATTACHMENT A

### IDENTIFICATION OF FACILITY AND COST AND ESTIMATES\*

**FACILITY IDENTIFICATION NUMBER:** \_\_\_\_\_

**NAME OF FACILITY:** \_\_\_\_\_

**ADDRESS OF FACILITY:** \_\_\_\_\_

The Trust Fund is established to provide financial assurance for the above identified facility for the current cost estimates as follows (Please see the attached Financial Assurance Calculation Forms A, B, C, and D):

CLOSURE	\$ _____
POST-CLOSURE	\$ _____
CORRECTIVE ACTION	\$ _____
TOTAL	\$ _____

By their signature below, the parties agree that this Attachment A is incorporated into and made part of the Trust Agreement dated \_\_\_\_\_.

#### FOR THE GRANTOR

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

#### FOR THE TRUSTEE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

#### FOR THE EXECUTIVE SECRETARY

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Executive Secretary \_\_\_\_\_

\*Please make a copy of this form for each facility which will be covered under this Trust Agreement

## ATTACHMENT B

### TRUST ASSETS/ITEMIZATION OF PROPERTY OR MONEY THE ACCOUNT CONSISTS OF INITIALLY

Instructions - Itemize below the property or money that the Trust Fund consists of:

By their signature below, the parties agree that this Attachment B is incorporated into and made part of the Trust Agreement dated \_\_\_\_\_.

#### FOR THE GRANTOR

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

#### FOR THE TRUSTEE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

#### FOR THE EXECUTIVE SECRETARY

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Executive Secretary

## ATTACHMENT C

### PERSONS DESIGNATED TO SIGN ORDERS, REQUESTS, AND INSTRUCTIONS TO THE TRUSTEE

#### FOR THE GRANTOR

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

_____ Name	_____ Signature	_____ Title
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_____ Name	_____ Signature	_____ Title
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_____ Name	_____ Signature	_____ Title
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_____ Name	_____ Signature	_____ Title
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_____ Name	_____ Signature	_____ Title
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#### **When completed send this document to:**

Executive Secretary, Solid and Hazardous Waste Control Board  
PO Box 144880  
Salt Lake City, Utah 84114-4880